

**ASSEMBLY BILL**

**No. 418**

**Introduced by Assembly Member Pacheco**

February 14, 2003

---

---

An act to amend Sections 415.20, 415.45, and 415.46 of, and to add Section 415.95 to, the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 418, as introduced, Pacheco. Civil actions: service of summons.

Existing law establishes the procedures by which a person or business organization may be served a summons and complaint in a civil action.

This bill would revise and recast those provisions. The bill would, among other things, allow a summons and complaint to be served by leaving a copy of these documents at the usual mailing address of the person to be served, followed thereafter by a mailed copy. The bill would additionally allow a business organization to be served by delivering a copy of the summons and the complaint to the person who is apparently in charge of that organization, as specified. The bill would also make related changes and technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1.   Section 415.20 of the Code of Civil Procedure  
2     is amended to read:

1 415.20. (a) In lieu of personal delivery of a copy of the  
2 summons and of the complaint to the person to be served as  
3 specified in Section 416.10, 416.20, 416.30, 416.40, ~~or 416.50, or~~  
4 ~~416.95~~ a summons may be served by leaving a copy of the  
5 summons and of the complaint during usual office hours in his or  
6 her office *or usual mailing address, other than a United States*  
7 *Postal Service post office box*, with the person who is apparently  
8 in charge thereof, and by thereafter mailing a copy of the summons  
9 and of the complaint ~~(by by first-class mail, postage prepaid)~~  
10 *prepaid* to the person to be served at the place where a copy of the  
11 summons and of the complaint were left. Service of a summons in  
12 this manner is deemed complete on the 10th day after ~~such the~~  
13 mailing.

14 (b) If a copy of the summons and of the complaint cannot with  
15 reasonable diligence be personally delivered to the person to be  
16 served, as specified in Section 416.60, 416.70, 416.80, or 416.90,  
17 a summons may be served by leaving a copy of the summons and  
18 of the complaint at such person's dwelling house, usual place of  
19 abode, usual place of business, or usual mailing address other than  
20 a United States Postal Service post office box, in the presence of  
21 a competent member of the household or a person apparently in  
22 charge of his or her office, place of business, or usual mailing  
23 address other than a United States Postal Service post office box,  
24 at least 18 years of age, who shall be informed of the contents  
25 thereof, and by thereafter mailing a copy of the summons and of  
26 the complaint ~~(by by first-class mail, postage prepaid)~~ *prepaid* to  
27 the person to be served at the place where a copy of the summons  
28 and of the complaint were left. *If the marshal, sheriff, or registered*  
29 *process server is not granted access to an employee at his or her*  
30 *place of employment, or is attempting to serve at a usual mailing*  
31 *address other than a United States Postal Service post office box,*  
32 *a summons may be served by leaving a copy of the summons and*  
33 *of the complaint, at the same time, with the person who is*  
34 *apparently in charge thereof, and by thereafter mailing a copy of*  
35 *the summons and of the complaint by first-class mail, postage*  
36 *prepaid to the person to be served at the place where a copy of the*  
37 *summons and of the complaint were left.* Service of a summons in  
38 this manner is deemed complete on the 10th day after the mailing.

39 SEC. 2. Section 415.45 of the Code of Civil Procedure is  
40 amended to read:

1 415.45. (a) A summons in an action for unlawful detainer of  
2 real property may be served by posting if upon affidavit it appears  
3 to the satisfaction of the court in which the action is pending that  
4 the party to be served cannot with reasonable diligence be served  
5 in any manner specified in this article other than publication and  
6 that:

7 (1) A cause of action exists against the party upon whom  
8 service is to be made or he *or she* is a necessary or proper party to  
9 the action; or

10 (2) The party to be served has or claims an interest in real  
11 property in this state that is subject to the jurisdiction of the court  
12 or the relief demanded in the action consists wholly or in part in  
13 excluding ~~such~~ that party from any interest in ~~such~~ the property.

14 (b) The court shall order the summons to be posted on the  
15 premises in a manner most likely to give actual notice to the party  
16 to be served, *and, if requested, to all other persons who may claim*  
17 *to occupy the premises* and direct that a copy of the summons and  
18 of the complaint be ~~forthwith~~ mailed by certified mail to ~~such~~ the  
19 party at his *or her* last known address. *Mailing to all other persons*  
20 *who may claim to occupy the premises shall be in the manner*  
21 *prescribed in subdivision (c) of Section 415.46.*

22 (c) Service of summons in this manner is deemed complete on  
23 the 10th day after posting and mailing.

24 (d) Notwithstanding an order for posting of the summons, a  
25 summons may be served in any other manner authorized by this  
26 article, except publication, in which event ~~such~~ that service shall  
27 supersede any posted summons.

28 SEC. 3. Section 415.46 of the Code of Civil Procedure is  
29 amended to read:

30 415.46. (a) In addition to the service of a summons and  
31 complaint in an action for unlawful detainer upon a tenant and  
32 subtenant, if any, as prescribed by this article, a prejudgment claim  
33 of right to possession may also be served on any person who  
34 appears to be or who may claim to have occupied the premises at  
35 the time of the filing of the action. Service upon occupants shall  
36 be made pursuant to subdivision (c) by serving a copy of a  
37 prejudgment claim of right to possession, as specified in  
38 subdivision (f), attached to a copy of the summons and complaint  
39 at the same time service is made upon the tenant and subtenant, if  
40 any.

1 (b) Service of the prejudgment claim of right to possession in  
2 this manner shall be effected by a marshal, sheriff, or registered  
3 process server.

4 (c) When serving the summons and complaint upon a tenant  
5 and subtenant, if any, the marshal, sheriff, or registered process  
6 server shall make a reasonably diligent effort to ascertain whether  
7 there are other adult occupants of the premises who are not named  
8 in the summons and complaint by inquiring of the person or  
9 persons who are being personally served, or any person of suitable  
10 age and discretion who appears to reside upon the premises,  
11 whether there are other occupants of the premises.

12 If the identity of ~~such~~ an occupant is disclosed to the officer or  
13 process server and the occupant is present at the premises, the  
14 officer or process server shall serve that occupant with a copy of  
15 the prejudgment claim of right to possession attached to a copy of  
16 the summons and complaint. If personal service cannot be made  
17 upon that occupant at that time, service may be effected by (1)  
18 leaving a copy of a prejudgment claim of right to possession  
19 attached to a copy of the summons and complaint addressed to that  
20 occupant with a person of suitable age and discretion at the  
21 premises, (2) affixing ~~the same so that it is~~ *those documents so that*  
22 *they are* not readily removable, in a conspicuous place on the  
23 premises, in a manner most likely to give actual notice to that  
24 occupant, and (3) sending ~~the same~~ *those documents* addressed to  
25 that occupant by first-class mail.

26 In addition to the service on an identified occupant, or if no  
27 occupant is disclosed to the officer or process server, or if  
28 substituted service is made upon the tenant and subtenant, if any,  
29 the officer or process server shall serve a prejudgment claim of  
30 right to possession for all other persons who may claim to occupy  
31 the premises at the time of the filing of the action by (1) leaving  
32 a copy of a prejudgment claim of right to possession attached to  
33 a copy of the summons and complaint at the premises at the same  
34 time service is made upon the tenant and subtenant, if any, (2)  
35 affixing ~~the same so that it is~~ *those documents so that they are* not  
36 readily removable, in a conspicuous place on the premises so that  
37 it is likely to give actual notice to an occupant, and (3) sending ~~the~~  
38 ~~same~~ *those documents* addressed to “all occupants in care of the  
39 named tenant” to the premises by first-class mail. *Service may*



1 *also be made on all other persons who may claim to occupy the*  
2 *premises pursuant to subdivision (b) of Section 415.45.*

3 The person serving process shall state the date of service on the  
4 prejudgment claim of right to possession form. However, the  
5 absence of the date of service on the prejudgment claim of right to  
6 possession does not invalidate the claim.

7 (d) Proof of service under this section shall be filed with the  
8 court and shall include a statement that service was made pursuant  
9 to this section. Service on occupants in accordance with this  
10 section ~~shall~~ *may* not alter or affect service upon the tenant or  
11 subtenant, if any.

12 (e) If an owner or his or her agent has directed and obtained  
13 service of a prejudgment claim of right to possession in accordance  
14 with this section, no occupant of the premises, whether or not ~~such~~  
15 *the* occupant is named in the judgment for possession, may object  
16 to the enforcement of that judgment, as prescribed in Section  
17 1174.3.

18 (f) The prejudgment claim of right to possession shall be made  
19 on the following form:

1 NOTE TO PRINTING OFFICE: INSERT CAMERA-READY  
2 COPY HERE

3  
4 for Prejudgment Claim of Right to Possession form as printed on  
5 pages 4 to 7 of Chapter 57, 1991 Statutes.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40



1 SEC. 4. Section 415.95 is added to the Code of Civil  
2 Procedure, to read:  
3 415.95. A summons may be served on a business  
4 organization, form unknown, by delivering a copy of the summons  
5 of the complaint to a person who is apparently in charge of that  
6 business organization.

